

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GEOFFREY R. LAWSON, SR.,

Plaintiff,

vs.

BRENT CARNEY, ET AL.,

Defendants.

No. 2:15-cv-00184-MKD

ORDER FOLLOWING
TELEPHONIC STATUS
CONFERENCE AND DENYING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

ECF Nos. 97, 109, 110

BEFORE THE COURT is Plaintiff's Second Renewed Emergency Motion for Preliminary Injunction or Release from Custody (ECF No. 97). On December 6, 2016, the Court held a telephonic status to address outstanding issues.

Geoffrey Lawson is a prisoner at Airway Heights Corrections Center (AHCC) in Airway Heights, Washington. ECF No. 8 at 6. Proceeding *pro se*, Plaintiff brings suit under 42 U.S.C. § 1983. ECF No. 8 at 5. He alleges Department of Corrections (DOC) Chaplain Joseph Luce, Food Services Manager

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1 Mark Murphy, Dietary Services Manager Brent Carney, ARNP Jody Sabatino, and
2 Assistant Supervisor Patric Knie (collectively “Defendants”)¹ provide him with
3 Kosher meals to which he has adverse physical reactions. ECF No. 97 at 1-2.
4 Plaintiff seeks a variety of monetary, declaratory, and injunctive relief through the
5 incorporation of his previous motions.

6 When Plaintiff filed his complaint in August 2015, he also sought an
7 emergency injunction to prohibit Defendants from serving him soy and non-kosher
8 food. ECF Nos. 2, 8. Defendants responded, contending Plaintiff was receiving a
9 kosher diet and had not demonstrated a medical need for a soy-free diet. ECF No.
10 16. The Court denied Plaintiff’s motion for an injunction but ordered Defendants
11 to test Plaintiff for “any soy or other food allergy.” ECF No. 26 at 2. Plaintiff
12 submitted to an allergy test for soy on November 30, 2015, the results of which
13 indicated he is not allergic to soy. ECF No. 37. Defendants did not have Plaintiff
14 tested for “other food allerg[ies]” as directed by the Court. *Id.*

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16 ¹ Plaintiff included K. Coun and A.C. Butler as “additional Defendants” on the
17 fifth page of his complaint. Rule 10(a) requires a plaintiff to name “all the parties”
18 in title of a complaint. Because he did not comply with Rule 10(a) or plead facts
19 against these persons, the Court did not add them as Defendants to this action.
20 ECF No. 9.

1 Plaintiff filed a renewed motion for preliminary injunction or in the
2 alternative release from custody, ECF No. 68, which the Court denied, ECF No. 79
3 at 6-8.

4 Plaintiff has filed a Second Renewed Motion for Preliminary Injunction,
5 setting forth his alleged reactions to the provided Kosher meals. ECF No. 97. He
6 asks this Court to “prohibit Defendants from serving him the current Kosher
7 meals” and to grant all relief requested in the prior two injunction motions. ECF
8 No. 97 at 1-3. In the alternative, Plaintiff seeks release from custody. *Id.*
9 Defendants contend the motion should be denied, as was the initial motion for
10 preliminary injunction, and the first renewed motion for preliminary injunction
11 because no new facts exist. ECF No. 99.

12 “A plaintiff seeking a preliminary injunction must establish that he is likely
13 to succeed on the merits, that he is likely to suffer irreparable harm in the absence
14 of preliminary relief, that the balance of equities tips in his favor, and that an
15 injunction is in the public interest.” *Am. Freedom Def. Initiative v. King Cty.*, 796
16 F.3d 1165, 1168 (9th Cir. 2015) (citing *Winter v. Natural Res. Def. Council, Inc.*,
17 555 U.S. 7, 20 (2008)). Plaintiff has not produced evidence that his circumstances
18 have changed since the Court last found that Plaintiff failed to demonstrate that he
19 is likely to succeed on the merits (ECF No. 79 at 7-8). At this time, it is also
20 unclear whether he suffers irreparable injury as a result of receiving kosher meals.

1 Plaintiff has not demonstrated that the balance of equities and public interest
2 warrant the extraordinary and drastic remedy of a preliminary injunction. *See*
3 *Mazuek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted).

4 However, the Court finds that Defendants only complied with part of the
5 Court's prior order to test Plaintiff for "any soy or other food allergy." ECF No.
6 26 at 2. Given Plaintiff's representations regarding his reactions to the meals, the
7 Court orders Defendants (excluding Defendant Sabatino) to administer food
8 allergy tests previously ordered by the Court, within 30 days.

9 IT IS ORDERED:

- 10 1. The Motion for Preliminary Injunction, **ECF No. 97**, is **DENIED**, with
11 the right to renew depending upon the results of the food allergy tests.
- 12 2. Defendants must **arrange for the Plaintiff to be medically tested** for
13 any food allergies within 30 days of this Order **and provide those**
14 **results to the Court and Plaintiff**. If said medical testing reveals a food
15 allergy, Plaintiff is granted leave to seek further relief from the Court.
- 16 3. Plaintiff's renewed motion to appoint counsel (**ECF No. 109**) is
17 **DENIED**.
- 18 4. Plaintiff's motion to appoint expert (ECF No. 110) is **DENIED**.

1 5. Plaintiff shall review the docket sheet, and **provide notice to the Court**
2 **by December 13, 2016** if he has not received any of the Court's orders or
3 case pleadings.

4 6. The previously issued scheduling order (ECF No. 101) is modified as
5 follows: **Plaintiff shall respond to Defendants' Motions for Summary**
6 **Judgment (ECF No. 84, ECF No. 87) by January 6, 2017.** Defendants
7 shall file a reply consistent with the local rules.

8 7. The scheduling order issued in **ECF No. 79** is STRIKEN.

9 IT IS FURTHER ORDERED that the following schedule is established:

10 1. Pursuant to Rule 16 of the Federal Rules of Civil Procedure (Fed. R. Civ.
11 P.), this schedule "shall not be modified except upon a showing of good
12 cause and by leave [of the Court]." Fed. R. Civ. P. 16(f) provides for
13 sanctions for failure to obey the Scheduling Order.

14 2. The parties are reminded to follow all Federal and Local Rules, in particular
15 Local Rule (LR) 7.1, which governs motion practice. **The Court may**
16 **choose to disregard any materials not timely filed and motions not noted**
17 **for hearing in compliance with the rules.**

18 LR 7.1(f) will be strictly enforced. Motions for leave to file an overlength
19 brief must be filed and ruled on prior to filing the overlength brief.

20 Overlength briefs will be allowed only when good cause is shown.

- 1 3. Pursuant to Fed. R. Civ. P. 26(a)(3), plaintiff shall provide all disclosures
2 regarding experts to defendants no later than **January 13, 2017**. Defendants
3 shall provide all Rule 26(a)(2) disclosures by **January 27, 2017**. The parties
4 shall identify any rebuttal experts and provide their reports by **February 10,**
5 **2017**.
- 6 4. All discovery shall be completed on or before **February 17, 2017**. All
7 written discovery shall be served no later than 40 days prior to the discovery
8 cut-off date. THE PARTIES SHALL FILE NO DISCOVERY EXCEPT
9 THOSE PORTIONS NECESSARY TO SUPPORT MOTIONS. If the
10 parties need a ruling as to any discovery question and wish to avoid the time
11 and expense of a written motion, they may, together, obtain an expedited
12 ruling through a telephone conference call to the Court at 1-877-336-1828,
13 access code: 3873484. The parties should contact chambers prior to any
14 telephonic conference call to schedule the call. This may be accomplished
15 by sending an email with the proposed date and time to
16 DimkeOrders@waed.uscourts.gov.
- 17 5. All dispositive motions shall be filed and served on or before **February 17,**
18 **2017**. This deadline may only be altered by the Court, for good cause shown.
- 19 a. The motion must strictly comply with all requirements of LR 7.1 and
20 56.1.

- 1 b. Counsel should make evidentiary objections as discussed in LR
2 56.1(b) and (c) within the parties' statement of facts as opposed to
3 filing a separate motion to strike.
- 4 c. All materials filed in support of, or in opposition to, a motion for
5 summary judgment must strictly comply with the requirements of Fed.
6 R. Civ. P. 56(e). *See Orr v. Bank of America*, 285 F.3d 764 (9th Cir.
7 2002).
- 8 d. The Court's copies of any exhibits submitted in support of, or in
9 opposition to, a dispositive motion shall be bound and tabbed.
- 10 e. Failure to comply with the above requirements may result in the Court
11 disregarding any noncomplying pleadings.
- 12 6. a. In accordance with Fed. R. Civ. P. 26(a)(3), exhibit and witness lists shall
13 be filed and served, and exhibits made available for inspection (or copies
14 provided) on or before **April 3, 2017**.
- 15 b. All exhibits shall be premarked: plaintiff's exhibits shall be numbered
16 1 through 100; defendants shall use numbers 101 through 200.
- 17 c. The parties shall also serve, but not file at this time, a list of those
18 witnesses whose testimony may be by deposition, along with a purged
19 transcript of deposition testimony (see, LR 32.1).
- 20

1 d. Any objection to use of a deposition or an exhibit proposed by an
2 opponent shall be filed and served by **April 24, 2017**. And shall be
3 heard at the pretrial conference. A failure to object will be considered
4 a waiver, and all items listed and not objected to will be considered
5 admitted.

6 e. **May 8, 2017**, the parties shall submit a bound and tabbed bench copy
7 of their exhibits for the Court's reference at the pretrial conference.

8 Per his request at the December 6, 2016 hearing, Plaintiff Lawson is
9 not required to comply with this requirement.

10 7. The list of exhibits contained in the joint pretrial order shall reflect the
11 exhibit marking scheme described above. In preparing the joint pretrial
12 order, the parties shall confer regarding duplicate exhibits and determine
13 which party will admit such exhibits for trial.

14 8. Unless otherwise ordered, a final telephonic pretrial conference shall be held
15 **May 15, 2017, at 11: a.m.** The parties shall call the court's conference line
16 at: **877-336-1828 Access Code: 3873484# Password: 0184** five minutes
17 before the time scheduled for the conference. Counsel for defendants shall
18 facilitate plaintiff's telephonic participation if he is incarcerated. After the
19 pretrial conference, the case will be referred to the assigned District Court
20 Judge for trial.

1 **IT IS SO ORDERED.** The District Executive is directed to file this Order
2 and provide copies to Plaintiff and counsel for defendants.

3 DATED this December 8, 2016.

4 s/Mary K. Dimke
5 MARY K. DIMKE
6 UNITED STATES MAGISTRATE JUDGE
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